

ADMINISTRATIVE PANEL DECISION

American Multi-Cinema, Inc. v. Ionos SE by 1&1 Internet Inc. / Infinite Gains
Case No. D2022-2102

1. The Parties

The Complainant is American Multi-Cinema, Inc., United States of America (“United States”), represented by Husch Blackwell LLP, United States.

The Respondent is Ionos SE by 1&1 Internet Inc., United States / Infinite Gains, United States.

2. The Domain Name and Registrar

The disputed domain name <amctoken.net> (“the Domain Name”) is registered with Ionos SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 14, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 20, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 13, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on July 21, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a corporation established under the laws of the State of Missouri, United States and headquartered in Leawood, Kansas, United States. The Complainant and its parent company, AMC Entertainment Holdings, Inc., whose “AMC” stock is traded on the New York Stock Exchange, have been operating movie theatres since 1920, using the name “AMC” since 1968. They currently operate nearly 600 theatres in the United States and more than 900 worldwide, with approximately 200 million customers annually.

The Complainant holds over one hundred AMC-formative trademarks in the United States and internationally, including the following trademark registrations:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
AMC (word)	United States	1435012	March 31, 1987
AMC (word)	European Union	37044	April 30, 1998
AMC (word)	China	935564	January 21, 1997
AMC (word)	Canada	507936	February 11, 1999
AMC (word)	India	1622039	November 19, 2007

The Complainant has also registered a number of design marks featuring the initials “AMC”. The Complainant’s marks appear on the Complainant’s websites such as “www.amctheaters.com” and social media sites and in extensive online, print, and broadcast advertising in the United States and other countries.

FAQs on the Complainant’s website explain how customers can purchase theatre tickets and entertainment packages with cryptocurrency and crypto tokens.

The Registrar reports that the Domain Name was created on May 22, 2021. The Registrar’s Whois database listed the registrant organization as 1&1 Internet Inc., a German web hosting company affiliated with the Registrar Ionos SE, and the Complainant initially named both as Respondents in this proceeding. However, after receiving notice of the Complaint, the Registrar reported that the underlying registrant is the Respondent “Infinite Gains”, with a postal address in Pensacola, Florida, United States. Accordingly, this Decision refers to “Infinite Gains” hereafter as the “Respondent”. The Panel notes that the online database of the Florida Secretary of State lists no entity named “Infinite Gains” registered to do business in Florida.

Screenshots of the website associated with the Domain Name, found through the Internet Archive’s Wayback Machine, show that the Domain Name was used for a website (the “Respondent’s website”) advertising and selling a cryptocurrency, “AMC Coin”, promoted as a “fan token” supporting the Complainant’s stock. The website displayed the Complainant’s trademarked logos (the stylized letters “AMC” and those letters in a circle), the words “AMC Token”, and a photograph of Adam Aron, the Complainant’s Chairman and CEO. The website was headed with the tagline, “a community coin backed....by apes!” To “ape” is to purchase or enter a position on a cryptocurrency coin, according to the Crypto Dictionary at “www.blockspot.io”. The Respondent’s website displayed a “Buy Now” button with the inducement, “Why buy other crypto when you can buy a token that support [sic] your favorite stock??”

The Domain Name does not resolve to an active website at the time of this Decision.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the Domain Name is confusingly similar to its registered AMC mark, incorporating the AMC mark in its entirety and adding the descriptive term "token". This does not avoid confusion, particularly as the Complainant itself advertises that it accepts payment in crypto tokens and the Respondent referred to the Complainant on its website and displayed the Complainant's AMC design marks on its website.

The Complainant contends that the Respondent has no permission to use the Complainant's marks, is not commonly known by a corresponding name, and has used the Domain Name only to misdirect Internet users to the Respondent's website for the Respondent's own pecuniary benefit. Hence, the Complainant argues that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant argues further that the Respondent registered and used the Domain Name in bad faith to disrupt the Complainant's business and mislead Internet users for commercial gain. Without disclaiming affiliation, the Respondent's website displayed the Complainant's logos, falsely suggesting an association with the Complainant, while soliciting investment in "unlicensed and unauthorized crypto tokens for its own pecuniary benefit and misleading consumers to falsely believe purchase of such tokens will allow consumers to 'support your favorite stock'."

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The Domain Name incorporates the Complainant's registered AMC mark in its entirety and adds the dictionary term "token", which does not avoid a finding of confusing similarity. See *id.*, section 1.8. (As usual, the Top-Level Domain ".net" is disregarded as a standard registration requirement. See *id.* section 1.11.1.)

The Panel finds, therefore, that the Domain Name is confusingly similar to the Complainant's AMC mark for purposes of the first Policy element and concludes that the Complainant has established the first element of

the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the Respondent's use of the Domain Name to advertise and sell crypto tokens ostensibly somehow linked to or "supporting" the Complainant's stock and giving a false impression of association with the Complainant. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. While it is possible to conceive of a nominative fair use argument involving the sale of crypto tokens legitimately linked to AMC stock, and the Complainant's tokenized stock is currently traded (see "www.crypto.com"), there is no evidence here that the Respondent actually made such use of the Domain Name, and the Respondent has not come forward with such an argument. The Panel concludes, therefore, that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following (in which "you" refers to the registrant of the domain name):

"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

This example is apposite in the circumstances of this proceeding. The Respondent was clearly aware of the Complainant and its AMC marks, as the Respondent's website displayed the Complainant's word and design marks, referred to the Complainant, displayed a photo of its CEO, and claimed that purchases of the Respondent's crypto tokens somehow supported the Complainant's stock. The Domain Name is inherently misleading, as it incorporates the Complainant's AMC mark in its entirety, and the Respondent's website obscured the identity of the website operator and included no disclaimer of affiliation, while suggesting some form of association with the Complainant, to encourage investment in crypto tokens. Whether this was a genuine investment solicitation or a fraudulent scheme, the Panel finds that this conduct represents bad faith exploitation of the Complainant's trademark.

The Panel concludes that the Complainant has established the third element of the Complaint.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <amctoken.net>, be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: August 3, 2022